IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	29.10.2024
Pronounced On	05.02.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27379 of 2021
and
W.M.P.Nos.28895 and 28897 of 2021

Shri.A.S.Manjunath Sadasivam,
Legal Heir of Late Pushparani,
Old No.23, New No.51,
North Boag Road,
T.Nagar, Chennai – 600 017. ... Petitioner

Vs.

The Principal Commissioner of Income Tax,
Chennai-1, Room No.401, 4th Floor,
Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ... Respondent

Prayer**:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Impugned Order in C.No.364/VSVS/PCIT-I/2021-2022 dated 27.10.2021 passed by the respondent, Principal Commissioner of Income Tax, Chennai under Section 5 of the Direct Tax Vivad se Vishwas Act, 2020 (hereinafter called "VSVS") and the Form 1 and Form 3 issued to the petitioner on

20.04.2021 and quash the same and directing the respondent to consider the plea for the proper computation of disputed tax in Form 1 filed by the petitioner and the request made by the petitioner on 20.10.2021 and the benefit of VSVS be made available to the Petitioner who has been discriminated in the facts and circumstances of the case.

For Petitioner	:	Mr.V.S.Jayakumar Senior Counsel for Mrs.G.Vardini Karthik
For Respondent	:	Mr.B.Ramanakumar Senior Standing Counsel

ORDER

In this Writ Petition, the petitioner has challenged impugned Communication/Order dated **27.10.2021** bearing reference C.No.364/VSVS/PCIT-1/2021-2022 passed by the respondent. Operative portion of the Impugned Order reads as under:-

> "In continuation of this office letter of even number dated 18.08.2021, I am directed to convey that your request vide letter dated 20.10.2021 for revision of Form 3 issued on 20.04.2021 by this office cannot be acceded to. However, you are at liberty to approach the Hon'ble High Court of Madras for restoration of Writ Appeal filed by the Department."

2. By the Impugned Communication/Order dated **27.10.2021**, the

respondent has rejected the request of the petitioner dated **20.10.2021** to revise **Form-3** dated **20.04.2021** issued by the respondent as the Designated Authority under the provisions of the Direct Tax Vivad Se Vishwas Act, 2020.

3. The case of the petitioner is that 60% of the amount of **Rs.74,92,270/-** determined and payable in **Form-3** dated **20.04.2021** issued by the respondent represents the interest under Section 234A, Section 234B and Section 234C of the Income Tax Act, 1961.

4. The petitioner opted to settle the dispute under the provisions of the aforesaid Act and the Rules made thereunder after an order under Section 159 of the Income Tax Act, 1961 came to be passed on **05.02.2015** declaring the petitioner as the legal representative of his deceased mother late Mrs.Pushparani.

5. Pursuant to the aforesaid order, an Assessment Order also came to be passed on **26.03.2015** against the estate of his deceased mother late Mrs.Pushparani. In the aforesaid Assessment Order dated **26.03.2015**, interest was also levied under Section 234A, Section 234B and Section 234C of the

Income Tax Act, 1961.

6. Operative portion of the aforesaid Assessment Order dated **26.03.2015** reads as under:-

> "8. The L.R filed the Computation Statement and a Return of Income for the A.Y2007-08 vide letter dated 20/03/2015. The assessee sold only 5530 Sq.Ft along with 4000 Sq.Ft of building. However, the LR wrongly claimed the purchase cost and Improvement Cost for the whole property comprising of 126495q.Ft. The L R was asked to explain in this regard. The Legal representative did not offer any explanation. Since, only 5530Sq.Ft was sold, the said expenses were restricted to the sold area of 5530 Sq. Ft. Similarly, the expense for the Pathway was reduced in the Sale Consideration value of Rs.1,39,25,000/- by the L R. **However, it was disallowed because in the Sale Deed it was clearly mentioned that a total of 5530 Sq.Ft was sold with 4690 Sq.Ft of land alongwith a Pathway of 540 Sq.Ft. Hence, the Computation statement of the assessee's L R was disallowed and the case was finalized by considering the above points.** The Long Term Capital Gains is worked as mentioned below:-

> <u>Computation of Long Term Capital Gains</u>

Sale Value (As per 50C)	: Rs.1,39,25,000/-
<u>Less</u>: Purchase Cost Rs.2,28,000/- (12649 Sq.Ft) (restricted to 5530 Sq. Ft) 2,28,000*519/100 = 11,83,320/ 12649°5530	: Rs. 5,17,334/-
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	: Rs. 1,34,07,666/-

> Less: Indexed Cost of Improvement from

M/s. Muthialpet Benefit Fund Ltd. (F.Y 1990-91) 4,00,000*519/182 = Rs.11,40,660	:	Rs. 11,40,660/-
Less: Impr' thro loan from IOB, Adyar (F.Y 95-96) 5,00,000/281*519-Rs.9,23,488	:	Rs. 1,22,67,006/-
	:	Rs. 9,23,488/-
	:	Rs. 1,13,43,518/-
Long Term Capital Gain	:	Rs. 1,13,43,518/-

The House Property Income shown as Rs. 11,04,367/- by the LR was verified and accepted as per the Computation Statement of the LR.

Income of the assessee through LTCG	:	Rs.1,13,43,518/-
Income of the assessee through House Property	:	Rs. 11,04,367/-
Total Income of the assessee	:	Rs.1,24,47,885/-
Rounded off	:	Rs.1,24,47,890/-
Assessed Income	:	Rs. 1,24,47,890/-
Tax on special rates for LTCG	:	Rs. 1,13,43,518/-

Demand Notice of Rs.59,85,810/-, Computation of Income Tax Statement and Penalty Notice u/s.271(1)(c) are enclosed.*"*

7. The details of the tax and interest liability determined under Section 234A, Section 234B and Section 234C of the Income Tax Act, 1961, in the Assessment Order dated **26.03.2015** are as follows:-

Table-1

Sl. No.	Heads	Amount (In Rs.)	Grand Total
1	Total Taxable Income	1,24,47,890	
2	Capital Gain Income	1,13,43,518	
3	**Tax due on the aforesaid Total Taxable Income**	**28,47,653**	**28,47,653**
4	Interest under Section 234A of the Income Tax Act, 1961	3,13,247	
5	Interest under Section 234B of the Income Tax Act, 1961	27,33,792	
6	Interest under Section 234C of the Income Tax Act, 1961	91,118	
7	**Total Interest under Section 234A, Section 234B and Section 234C of the Income Tax Act, 1961**	**31,38,157**	**31,38,157**
			59,85,810

8. As against the aforesaid Assessment Order dated **26.03.2015**, the petitioner referred a revision application under Section 264 of the Income Tax Act, 1961 before the respondent. The respondent dismissed the application vide Order dated **14.01.2016**. This led to further steps against the petitioner to recover amounts determined in the Assessment Order dated **26.03.2015**.

9. Under these circumstances, the petitioner requested for waiver of interest levied under the aforesaid provisions of the Income Tax Act, 1961 by filing application dated **09.01.2017**. The aforesaid application was also rejected by the Chief Commissioner of Income Tax vide Order dated **06.03.2017** exercising the power under Section 119(2)(a) of the Income Tax Act, 1961.

10. Aggrieved by Section 159 Order dated **05.02.2015**, Revision Order dated **14.01.2016** passed by the respondent, declining to revise the Assessment Order dated **26.03.2015** and Order dated **06.03.2017** passed by the Chief Commissioner of Income Tax under Section 119(2)(a) of the Income Tax Act, 1961 read with the relevant Circular of the Board declining to waive interest determined and levied under Section 234A, Section 234B and Section 234C of the Income Tax Act, 1961 in the aforesaid Assessment Order dated **26.03.2015**, the petitioner filed W.P.Nos.9146 to 9148 of 2017. These Writ Petitions were disposed on **09.08.2019** by two separate orders.

11. While, W.P.No.9146 of 2017 and W.P.No.9148 of 2017 were disposed by a Common Order, W.P.No.9147 of 2017 was disposed by a separate order. Details of these orders are as under:-

Table-2

Case No.	Prayer	observations
W.P.No.9147 of 2017	For issuance of Writ of Certiorarified Mandamus, to call for the records of the second respondent in respect of the impugned order No.F.No.52 (1) CCIT-1/2016-17 dated 06.03.2017 and directing the respondents to waive the interest levied under Section 234 A, B and C.	3.In the light of the above observations, the impugned order passed by the second respondent No.F.No.52 (1) CCIT-1/2016-17 dated 06.03.2017, is hereby set aside and the matter is remanded back to the first respondent, who shall consider the same afresh, after giving due opportunity of personal hearing to the petitioner herein and shall pass appropriate orders in accordance with law, as expeditiously as possible, in any event, within a period of six weeks from the date of receipt of copy of this order. 4. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.
W.P.Nos.9146 of 2017	For issuance of Writ of Certiorari, to call for the records of the third respondent in respect of the impugned order No.NC W2 (5)/14-15 dated 05.02.2015 * and quash the same.	In the light of the above observations, the impugned order passed by the 05.02.2015 and third respondent No.NC W2(5)/14-15 dated the impugned order C.No.217/11/PCIT-1/2015-16 dated 14.01.2016 passed

Case No.	Prayer	observations
W.P.No.9148 of 2017	For issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order in C.No.217/11/PCIT-1/2015-16 # dated 14.01.2016 passed by the first respondent and quash the same and direct the first respondent respondent to consider the plea of the petitioner for the proper computation of capital gains tax in the facts and circumstances of the case.	by the first respondent, are hereby set aside and the matter is remanded back to the second respondent, who shall consider the same afresh, after giving due opportunity of personal bearing to the petitioner herein and shall pass appropriate orders in accordance with law, as expeditiously as possible, in any event, within a period of six weeks from the date of receipt of copy of this order. 4. Accordingly, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

* Order treating the petitioner as the Legal Heirs of his deceased Mother.

\# Order revision application filed under Section 264 of the Income Tax Act, 1961.

12. Aggrieved by the Orders passed by the Writ Court in the above mentioned Writ Petitions, the Income Tax Department filed W.A.Nos.4223 to 4225 of 2019. It is, at this juncture, the Parliament enacted the Direct Tax Vivad Se Vishwas Act, 2020 and thus the petitioner opted to file a declaration and an undertaking in **Form-1** and **Form-2** respectively in terms of Section 4

read with the Rules framed under the aforesaid Act.

13. The petitioner had filed **Form-1** and **Form-2** on **09.11.2020**. Thereafter, the petitioner filed revised **Form-1** and **Form-2** on **17.12.2020** under Section 4 of the aforesaid Act read with the Rules framed under the aforesaid Act.

14. The details of the declaration in **Form-1** and declaration in **Form-2** are as under:-

Table-3

	Amount payable as per the petitioner in Form-1 dated 09.11.2020	**Amount payable as per the petitioner in Form-2 dated 17.12.2020**	**Amount payable as per the petitioner in Form-3 dated 20.04.2020**
Tax Arrears	Rs.59,85,810/-	Rs.59,85,810/-	Rs. 7,97,097/-
Interest	Rs.31,38,157/-	Rs.31,38,157/-	---
Tax Arrears paid	Rs.33,53,781/-	---	---
Amount payable	Rs.32,03,610/- (before 31.12.2020)	Rs.14,23,827/- (before 31.03.2021)	Rs.74,92,270/- (before 30.04.2021)
Amount payable	Rs.34,88,375/- (after 31.12.2020)	Rs.15,66,209/- (after 31.03.2021)	Rs.82,41,497/- (after 30.04.2021)
Net Amount	Rs. 1,50,071/-	Rs.19,29,854/-	
Disputed Tax Interest		Rs.28,47,653/-	Rs.31,38,157/-
		Rs.31,38,157/-	

15. As per Section 4(2) of the Direct Tax Vivad Se Vishwas Act, 2020, upon filing a declaration, any Appeal pending before the Income Tax Appellate Tribunal or the Commissioner (Appeals) in respect of the disputed income or disputed interest or disputed penalty or disputed fee and tax arrears shall be deemed to have been the due from the date on which the Certificate under Sub-Section (1) to Section 4 of the Direct Tax Vivad Se Vishwas Act, 2020, is issued by the Designated Authority.

16. Similarly, as per Section 4(3) of the Direct Tax Vivad Se Vishwas Act, 2020, where any appeal is filed before an Appellate Forum or any petition before the High Court or the Supreme Court against any order in respect of tax arrears, the appellant shall withdraw the same with permission of the Court, wherever required after issuance of Certificate under Sub-Section 1 to Section 5 and on furnishing the proof of such withdrawal along with intimation of payment of the amount to the Designated Authority under Section 5(2) of the the Direct Tax Vivad Se Vishwas Act, 2020.

17. Consequently, these Writ Appeals filed by the Income Tax Department were dismissed by three separate orders all dated **10.11.2020** with the following observations:-

Table-4

W.A.No.4223 of 2019	W.A.No.4224 of 2019	W.A.No.4225 of 2019
7. In the light of the fact that the respondent/assessee has already availed the benefit under the Act, no useful purpose would be served in keeping this appeal pending. At the same time, safeguarding the interest of the respondent in the event the order to be passed by the Department under the Income Tax Act is not in favour of the respondent. Accordingly, the Writ Appeal stands disposed of on the ground that the respondent has already filed a declaration and the Department shall process the application at the earliest in accordance with the said Act and communicate the decision to the respondent at the earliest. As observed, the respondent/assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration filed by the respondent under Section 4 of the Income Tax Act is not in favour of the respondent. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in	7. In the light of the fact that the respondent/assessee has already availed the benefit under the Act, no useful purpose would be served in keeping this appeal pending. At the same time, safeguarding the interest of the respondent in the event the order to be passed by the Department under the Income Tax Act is not in favour of the respondent. Accordingly, the Writ Appeal stands disposed of on the ground that the respondent has already filed a declaration and the Department shall process the application at the earliest in accordance with the said Act and communicate the decision to the respondent at the earliest. As observed, the respondent/assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration filed by the respondent under Section 4 of the Income Tax Act is not in favour of the respondent. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be	7. In the light of the fact that the respondent/assessee has already availed the benefit under the Act, no useful purpose would be served in keeping this appeal pending. At the same time, safeguarding the interest of the respondent in the event the order to be passed by the Department under the Income Tax Act is not in favour of the respondent. Accordingly, the Writ Appeal stands disposed of on the ground that the respondent has already filed a declaration and the Department shall process the application at the earliest in accordance with the said Act and communicate the decision to the respondent at the earliest. As observed, the respondent/assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration filed by

W.A.No.4223 of 2019	W.A.No.4224 of 2019	W.A.No.4225 of 2019
restoration of the appeal and on such request made by the respondent by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders. 8. With this observation, the Writ Appeal stands disposed of with the aforementioned liberty. No costs. Consequently, connected miscellaneous petition is closed.	filed for condonation of delay in restoration of the appeal and on such request made by the respondent by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders. 8. With this observation, the Writ Appeal stands disposed of with the aforementioned liberty. No costs.	the respondent under Section 4 of the Income Tax Act is not in favour of the respondent. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the respondent by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders. 8. With this observation, the Writ Appeal stands disposed of with the aforementioned liberty. No costs.

18. Under these circumstances, Form-3 was issued to the petitioner on **20.04.2021**. A sum of **Rs.74,92,270/-** was determined to be paid by the petitioner on or before **30.04.2021** and **Rs.82,41,497/-** after **30.04.2021**.

19. In this background, the petitioner filed a petition for rectification of

the aforesaid order in **Form-3** on **04.08.2021**, which has culminated in the Impugned Order **27.10.2021** of the respondent. The learned Senior Counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court and that of this Court in the following cases:-

i. **Dwarka Prasad Agarwal (D) by Lrs and another** Vs. **B.D.Agarwal and others**, (2003) 6 SCC 230.
ii. **Union of India** Vs. **Rajeev Bansal,** 2024 SCC OnLine SC 2693.
iii. **Commissioner of Income-Tax** Vs. **M.Hemanathan**, (2016) 384 ITR 177 (Mad.).
iv. **Commissioner of Income-Tax (Central), Madras** Vs. **Indian Express (Madurai) Private Limited**, [1983] 140 ITR 705 (Mad.).

20. The learned Senior Counsel for the petitioner has explained his case and history at length by referring to the documents filed in support of the Writ Petition.

21. The learned Senior Standing Counsel for the respondent submits that the Writ Petition is liable to be dismissed as there is no intermediate Impugned Order rejecting the application filed for rectification of **Form-3** dated **04.08.2021** passed by the respondent.

22. It was stated by the petitioner in the representation dated **04.08.2021** that out of the total tax liability of **Rs.74,92,270/-** (payable before **30.04.2021**), the interest under Section 234A, Section 234B and Section 234C and under Section 271C of the Income Tax Act, 1961 was **Rs.46,00,000/-** which was 60% of the total amount.

23. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

24. The decision of the Hon'ble Supreme Court in "**Dwarka Prasad Agarwal (D) by Lrs and another** Vs. **B.D.Agarwal and others**, (2003) 6 SCC 230" is irrelevant to the facts of the present case. In Paragraph No.37, the Hon'ble Supreme Court held as under:-

> ***"37. It is now well settled that an order passed by a court without jurisdiction is a nullity. Any order passed or action taken pursuant thereto or in furtherance thereof would also be nullities. In the instant case, as the High Court did not have any jurisdiction to record the compromise for the reasons stated hereinbefore and in particular as no writ was required to be issued having regard to the fact that public law remedy could not have been resorted to, the impugned orders must be held to be illegal and without jurisdiction and are***

liable to be set aside. <u>All orders and actions taken pursuant to or in furtherance thereof must also be declared wholly illegal and without jurisdiction and consequently are liable to be set aside. They are declared as such</u>."

25. The Hon'ble Supreme Court in "**Union of India** Vs. **Rajeev Bansal,** 2024 SCC OnLine SC 2693", in Paragraph No.32, held as under:-

"***32. A statutory authority may lack jurisdiction if it does not fulfil the preliminary conditions laid down under the statute, which are necessary to the exercise of its jurisdiction. There cannot be any waiver of a statutory requirement or provision that goes to the root of the jurisdiction of assessment. An order passed without jurisdiction is a nullity. Any consequential order passed or action taken will also be invalid and without jurisdiction. Thus, the power of assessing officers to reassess is limited and based on the fulfilment of certain preconditions.***"

26. This Court in "**Commissioner of Income Tax** Vs. **M.Hemanathan**, (2016) 384 ITR 177 (Mad.)", in Paragraph Nos.18 and 19, held as under:-

"18. Sub-section (1) of section 159 would apply to a case where a liability has already crystallised. The death of an assessee would not absolve the legal heirs of the assessee of any liability that the assessee had incurred during his life time. In the case on hand, the liability, if any, would have arisen only after an order is passed under section 263. Therefore, sub-section (1) of section 159 will not apply to the case on hand. Sub-section(2) of section 159 deals primarily with two contingencies. The first is dealt with in clause (a) of sub-section (2) of section 159. This clause (a) contemplates the contingency of a proceeding taken against the deceased before his death.

> ***19. In this case, the very initiation of proceedings under section 263 was done after the death. Clause (a) of sub-section (2) uses the expression "before his death". Therefore, clause (a) would not apply to the case on hand."***

27. In fact, none of the decisions cited by the learned Senior Counsel for the petitioner are relevant to the facts of the present case.

28. The petitioner had challenged the Assessment Order dated 26.03.2015 before the 1st respondent in W.P.No.9148 of 2017 (respondent herein) under Section 264 of the Income Tax Act, 1961. The 1st respondent in W.P.No.9148 of 2017 (respondent herein) had rejected the application filed under Section 264 of the Income Tax Act, 1961 vide Order dated 14.01.2016. W.P.No.9148 of 2017 was allowed on 09.08.2019 along with W.P.No.9146 of 2017. Order passed in W.P.No.9148 of 2017 was subject matter of W.A.No.4223 of 2019.

29. At this juncture, the petitioner wanted to settle the dispute under the provisions of the Direct Tax Vivad Se Vishwas Act, 2020 after W.P.No.9148 of 2017 was allowed on 09.08.2019 by way of remand during the pendency of W.A.Nos.4223, 4224 and 4225 of 2019 filed by the Income Tax Department.

30. The admitted position is that out of the total tax liability of **Rs.59,85,810/-** [Tax due at **Rs.28,47,653/-** + Total Interest at **Rs.31,38,157/-** under Section 234A, 234B and 234C of the Income Tax Act, 1961] as detailed in **Table No.1** of this Order, the petitioner had already paid a sum of **Rs.33,53,781/-** towards the aforesaid "**tax arrears**" on various dates. There is no dispute on the same.

31. This is also recognized in **Form-3** dated **20.04.2021** issued to the petitioner by the respondent, which the petitioner wanted to rectify.

32. Sum of **Rs.31,38,157/-** towards interest has to be waived under the Direct Tax Vivad Se Vishwas Act, 2020 as only the amount of the "**disputed tax**" has to be paid in terms of Sl.No.(a) to Table to Section 3 of the Direct Tax Vivad Se Vishwas Act, 2020. Relevant portion of Section 3 of the Direct Tax Vivad Se Vishwas Act, 2020 is reproduced below:-

Table-5

Sl. No.	Nature of tax arrear	Amount payable under this Act on or before the [31st day of December, 2020 or such later date as may be notified]*	Amount payable under this Act on or after the [1st day of January, 2021 or such later as may be notified] but on or before the last date
(a)	Where the **tax arrear** is the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax.	Amount of the **disputed tax**.	The aggregate of the amount of **disputed tax** and ten percent of disputed tax. Provided that where the ten percent of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act.
(b)	where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search under section 132 or section 132A of the Income-tax Act.	The aggregate of the amount of disputed tax and twenty-five percent of the disputed tax. Provided that where the twenty-five percent of disputed tax exceeds the aggregate amount of interest chargeable or charged on such	The aggregate of the amount of disputed tax and thirty-five percent of disputed tax. Provided that where the thirty-five percent of disputed tax exceeds the aggregate amount of interest chargeable or charged on such

Sl. No.	Nature of tax arrear	Amount payable under this Act on or before the [31st day of December, 2020 or such later date as may be notified]*	Amount payable under this Act on or after the [1st day of January, 2021 or such later as may be notified] but on or before the last date
		disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable under this Act.	disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable.
(c)	Where the tax arrear relates to disputed interest or disputed penalty or disputed fee.	Twenty-five percent of disputed interest or disputed penalty or disputed fee.	Thirty percent of disputed interest or disputed penalty or disputed fee.

33. The expression “**disputed tax**” and “**tax arrear**” have been defined in Section 2(j) and Section 2(o) of the Direct Tax Vivad Se Vishwas Act, 2020. Since the petitioner had filed a petition under Section 264 of the Income Tax Act, 1961, Clause F to Section 2(j) of the Direct Tax Vivad Se Vishwas Act, 2020 is relevant. Clause F to Section 2(j) and Section 2(o) of the Direct Tax Vivad Se Vishwas Act, 2020 are reproduced below:-

<u>Table-6</u>

Clause F to Section 2(j) of the Direct Tax Vivad Se Vishwas Act, 2020	Section 2(o) of the Direct Tax Vivad Se Vishwas Act, 2020
(j) "**disputed tax**", in relation to an assessment year or financial year, as the case may be, means the income-tax, including surcharge and cess (hereafter in this clause referred to as the amount of tax) payable by the appellant under the provisions of the Income-Tax Act, 1961 (43 of 1961), as computed hereunder:- (A) ... (B) ... (C) ... (D) ... (E) ... (F) **in a case where an application for revision under section 264 of the Income Tax Act is pending as on the specified date, the amount of tax payable by the appellant if such application for revision was not to be accepted.**	"**tax arrear**" means,- i. the aggregate amount of the disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable on such disputed tax; or ii. disputed interest; or iii. disputed penalty; or iv. disputed fee, as determined under the provisions of the Income Tax Act.

34. Under Section 3 of the Direct Tax Vivad Se Vishwas Act, 2020, where an assessee (declarant) files a declaration and an undertaking in respect of "**tax arrear**" under Section 4 of the said Act, then notwithstanding anything

contained in the Income Tax Act, 1961 or any other law for the time being in force, the amount payable by such an assessee (declarant) under the provisions of the Direct Tax Vivad Se Vishwas Act, 2020 shall be as in the above Table.

35. In this case, the "**tax arrear**" as per Section 2(o) of the Direct Tax Vivad Se Vishwas Act, 2020, is the aggregate amount of the disputed tax and interest charged on such "**disputed tax**" only. Thus, ordinarily only the "**disputed tax**" as defined in Section 2(j) of the Direct Tax Vivad Se Vishwas Act, 2020 is to be paid. Thus, a sum of **Rs.28,47,653/-** was payable in terms of Sl.No.(a) to Table to Section 3 of the Direct Tax Vivad Se Vishwas Act, 2020.

36. The petitioner had challenged the determination made in the Assessment Order dated **26.03.2015** before the respondent under Section 264 of the Income Tax Act, 1961 by filing a revision application. The said application was rejected on **14.01.2016.** The petitioner had successfully challenged the same in **W.P.No.9148 of 2017** in respect of which the Income Tax Department had filed **W.A.No.4223 of 2019** before the Division Bench of this Court.

37. As per 1st *Proviso* to Section 3 of the Direct Tax Vivad Se Vishwas Act, 2020, where an appeal or writ petition or special leave petition is filed by the income-tax authority on any issue before the appellate forum, the amount payable shall be one-half of the amount calculated in **Table No.1,** on such issue, in such manner as may be prescribed. 1st *Proviso* to Section 3 of the Direct Tax Vivad Se Vishwas Act, 2020 reads as under:-

> "**Provided that in a case where an appeal or writ petition or special leave petition is filed by the income-tax authority or any issue before the appellate forum, the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed.**
>
> Provided further that in a case where an appeal is filed before the Commissioner (Appeals) or objections is filed before the Dispute Resolution Panel by the appellant on any issue on which he has already got a decision in his favour from the Income Tax Appellate Tribunal (where the decision on such issue is not reversed by the High Court or the Supreme Court) or the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed:
>
> Provided also that in a case where an appeal is filed by the appellant on any issue before the Income-tax Appellate Tribunal on which he has already got a decision in his favour from the High Court (where the decision on such issue is not reversed by the Supreme Court), the amount payable shall be one-half of the amount in the Table above calculated on such issue, in such manner as may be prescribed."

38. Thus, the amount payable by the petitioner is only one-half of the amount calculated in **Sl.No.(3)** to **Table No.1,** in such issue, and in such manner as may be prescribed as per the 1st *Proviso* to Section 3 of the Direct

Tax Vivad Se Vishwas Act, 2020.

39. The case of the petitioner ought to have been reconciled in terms of Serial No.(a) to Table to Section 3 of the Direct Tax Vivad Se Vishwas Act, 2020 read with 1st *Proviso* to the said Act and the definition of "disputed tax" in Section 2(j)(F) and definition of "**tax arrears**" in Section 2(o) of the Direct Tax Vivad Se Vishwas Act, 2020.

40. Since the petitioner has already paid a sum of **Rs.33,53,781/-** as tax arrears on various dates as detailed in **Form-1** filed by the petitioner, the petitioner has to thus pay only 50% of **Rs.28,47,653/-** being one-half of the amount calculated in **Table No.1**. The aforesaid 50% of **Rs.28,47,653/-** was not paid before **31.03.2020**. Thus, the petitioner has to pay only **Rs.14,23,826.50/-**. A sum of **Rs.19,29,955/-** was paid in excess (**Rs.33,53,781/-** - **Rs.14,23,826.50/-** (being 50% of tax due of **Rs.28,47,653/-** in terms of the 1st *Proviso* to Section 3 of Direct Tax Vivad Se Vishwas Act, 2020).

41. As per Section 7 of the Direct Tax Vivad Se Vishwas Act, 2020, only

amounts paid in pursuance of a declaration made under Section 4 shall not be refundable under any circumstances. Here, no amount has been paid by the petitioner pursuant to the declaration filed under Section 4 of the Direct Tax Vivad Se Vishwas Act, 2020. As per Explanation to Section 7 of the Direct Tax Vivad Se Vishwas Act, 2020, where the declarant had paid any amount under the Income Tax Act, 1961 in respect of his "**tax arrear**" which exceeds the amount payable under Section 3 of the Direct Tax Vivad Se Vishwas Act, 2020, he / she shall be entitled to a refund of such excess amount. However, the said person will not be entitled to interest on such excess amount. Section 7 of the Direct Tax Vivad Se Vishwas Act, 2020 reads as under:-

> *"7. **No refund of amount paid:** Any amount paid in pursuance of a declaration made under section 4 shall not be refundable under any circumstances.*
>
> ***Explanation.**—For the removal of doubts, it is hereby clarified that **where the declarant had, before filing the declaration under sub-section (1) of section 4, paid any amount under the Income-tax Act in respect of his tax arrear which exceed s the amount payable under section 3, he shall be entitled to a refund of such excess amount, but shall not be entitled to interest on such excess amount** under section 244A of the Income-tax Act."*

42. The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance vide **Circular F.No.IT(A)/1/2020-TPL** dated **22.04.2020** has also

clarified as under:-

> "**Question No. 5** *What if the disputed demand including interest has been paid by the appellant while being in appeal?*
>
> **Answer:** Appeals in which appellant has already paid the disputed demand either partly or fully are also covered. **If the amount of tax paid is more than amount payable under Vivad Se Vishwas, the appellant will be entitled to refund without interest under Section 244A of the Act.**"

43. In the light of the above discussion, this Writ Petition deserves to be allowed with consequential relief to the petitioner.

44. Therefore, this Writ Petition is allowed by setting aside the Impugned Communication/Order **27.10.2021** rejecting the application filed by the petitioner to rectify the mistake in **Form-3** dated **20.04.2021** issued by the respondent under the provisions of the Direct Tax Vivad Se Vishwas Act, 2020.

45. The respondent shall refund the aforesaid amount of **Rs.19,29,955/-** to the petitioner forthwith or in the alternative allow adjustment of the said amount against any tax liability of the petitioner in his individual capacity.

46. This exercise is expected to be carried out by the respondent within a

period of 6 weeks from the date of receipt of a copy of this order.

47. This Writ Petition is allowed with the above direction. No costs. Connected Writ Miscellaneous Petitions are closed.

05.02.2025

Neutral Citation : Yes / No

kkd / arb

<u>To</u>:

The Principal Commissioner of Income Tax,
Chennai-1, Room No.401, 4th Floor,
Wanaparthy Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

<u>C.SARAVANAN, J.</u>

kkd / arb

Pre-Delivery Order in
W.P.No.27379 of 2021
and
W.M.P.Nos.28895 and 28897 of 2021

05.02.2025